IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 407 of 2003

Writ Appeal under Clause 15 of the Letters Patent against the Order dated 24.04.2002 in WP NO : 7850 OF 2002 on the file of the High Court.

Between:

The commissioner,

Tirupati Municipality,

Tirupati, Chittoor District.

APPELLANT

AND

1. Smt.Soora Manjula,

W/o.Late S.Muninadha Reddy, Major

R/o.210, Pedda Kapu Street,

Tirupati, Chittoor District.

2. The Prl.Secretary to Government,

Municipal Administration & Urban
Development Department,

A.P.Secretariat, Hyderabad.

....RESPONDENTS

Counsel for the Appellant:MR.K.BATHI REDDY

Counsel for the Respondent No.1: MR.P.V.SANJAY KUMAR

Counsel for the Respondent No.2: G.P. for Assignment

The Court made the following:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 414 of 2003

Writ Appeal under Clause 15 of the Letters Patent against the Order dated in WP NO : 7850 OF 2002 on the file of the High Court.

Between:

The Prl.Secretary to Government,

Municipal Administration & Urban
Development Department,

A.P.Secretariat, Hyderabad.

..... APPELLANT

AND

1. Smt.Soora Manjula,

W/o.Late S.Muninadha Reddy, Major

R/o.210, Pedda Kapu Street,

Tirupati, Chittoor District.

2. The Commissioner,

Tirupati Municipality,

Tirupati, Chittoor District.

.....RESPONDENTS

Counsel for the Appellant: GP FOR MUNCIPAL ADMN. & URBAN DEV.
Counsel for the Respondent No.1: MR.P.V.SANJAY KUMAR
Counsel for the Respondent No.2: MR.K.BATHI REDDY

The Court made the following:

The Hon'ble Sri Justice B. Sudershan Reddy
a n d

The Hon'ble Sri Justice K.C. Bhanu

W.A. Nos. 407 and 414 of 2003

COMMON ORDER: (per Sri Justice K.C. Bhanu)

These two appeals are filed against the orders passed by

a learned single Judge of this Court in W.P. No. 7850 of 2002 dated 24.4.2002.

The brief facts that are necessary for the disposal of the present appeal may be stated as follows:

The writ petitioner-1st respondent herein filed the writ petition for grant of writ of Mandamus directing the respondents to pay the compensation amount of Rs.37,55,000/- together with solatium at 30% and interest at 18% per annum from the date of taking over possession of land till payment is made. The brief facts that are required to notice leading to filing of the writ petition may be stated as follows:

The petitioner is the absolute owner of the land admeasuring 751 Sq. yards in T.S. No. 4047/1 of Tirupathi town of Chittoor District. The appellant-Tirupathi Municipality by its resolution No. 329 dated 29.8.1990 resolved to acquire the said land for widening the road connecting Tilak Road and Gangamma temple road passing through the second vegetable market. The 2nd respondent also through its endorsement Roc.No.8526/84/G2 dated 3.9.1990 requested the husband of the writ petitioner to handover the site to Tirupathi Municipality for taking further action in the matter. The 2nd respondent-Municipality in the first instance had agreed to allot alternative site to her husband but later as it was not feasible, by a resolution dated 31.1.1995 the Municipality resolved to pay compensation as per the market value determined by the revenue authorities. The revenue authority by its letter dated 19.6.1995 informed the Municipality that the market value of the land is fixed at Rs.5,000/- per Sq. yard. The 2nd respondent-Municipality addressed a letter to the Government for payment of compensation of Rs.37,55,000/-. The District Collector in his proceedings dated 18.5.1996 requested the Government to accord sanction for payment of compensation but during the lifetime of the husband of the petitioner, no compensation has been paid. In spite of the representations of the petitioner after the death of her husband, no

action has been taken and therefore the petitioner filed the writ petition.

At the stage of admission the learned single Judge disposed of the writ petition directing the 1st respondent-Government to take necessary steps for release of the funds and for payment of compensation to the petitioner expeditiously, preferably within a period of four months from the date of receipt of a copy of this order. Aggrieved by the same, the present appeals are filed by the Municipality and the Government respectively.

Learned counsel for the appellants contended that no proceedings under the Land Acquisition Act have been initiated and the competent authority has not conducted necessary enquiry as contemplated under the Act so as to finalise the compensation and no right whatsoever accrues to the writ petitioner to claim compensation in the absence of acquisition proceedings. Learned counsel for the appellant-Government further contended that no specific funds are earmarked except the funds which are allotted for which the Municipality is alone empowered to pay the compensation subject to the title and assignment of the land and its value through process of law and hence the impugned order is liable to be set aside.

On the other hand, learned counsel for the respondent No.1-writ petitioner contended that the possession of the land was taken in the year 1990. The Municipality failed to pay compensation and as a matter of fact the Municipality agreed to pay the compensation as determined by the revenue authorities and the revenue authorities fixed the market value of the land at Rs.5,000/- per Sq. yard and the petitioner was deprived of using the land without any compensation for more than 15 years and the valuation fixed by the Revenue Divisional Officer is based upon the report given by the Mandal Revenue Officer and therefore it is not open to the Government to disown its responsibility and hence he prays to dismiss the appeal.

The factual matrix is not in dispute. We are required to notice that the writ petitioner was disposed of at the stage of admission. The Municipal Council by its resolution No. 632 dated 26.3.1983 resolved to acquire the land of the husband of the petitioner and two others to an extent of 36800 Sq. feet for formation f 40' wide link road from Tilak Road to Gangamma Gudi Road. On 16.10.1990 the husband of the petitioner agreed to hand over the land to the Municipality for formation of 40' wide road. He also agreed for the rate that may be fixed by the District Collector or in the alternative to allot alternative site. As per the resolution 329 dated 29.8.1990 of the Municipal Council, the council resolved to acquire the land subject to the condition that the other suitable site may be given to the land owners or compensation be paid as per the rate fixed by the District Collector. The husband of the petitioner gave a letter dated 18.6.1990 stating that he is directed to take either compensation as fixed by the Collector for the site or exchange of site belonging to the Municipality. The Municipal Commissioner addressed a letter to the District Collector dated 2.2.1990 requesting the Collector to provide alternative site. At the request of the Municipal Commissioner, the R.D.O. fixed the market value of the land at Rs.5,000/- per sq. yard. Thereafter, the Municipal Commissioner requested the Government to accord sanction for payment of compensation at the rate of Rs.5,000/- per Sq. yard which comes to Rs.37,55,000/-. As per the resolution of the Municipal Council bearing No. 409 dated 31.1.1995, the Municipal Council resolved to send the proposals to pay the compensation. The Municipal Council also addressed a letter dated 3.7.1996 to the Collector stating that the rate fixed by the R.D.O. is very high and requested the Collector to refix the value of the said land. The Municipal Commissioner addressed a letter dated 22.2.1999 to the Commissioner and Directorate of Municipal Administration to consider the orders by the Government for sanction of Rs.37.55 lakhs towards compensation. A similar letter dated 30.3.2000 was also addressed by the Municipal Commissioner to the Principal Secretary, Municipal Administration and Urban Development

Department to consider and fix the amount of compensation to be payable to the writ petitioner. Hence the writ petition was filed.

There is no dispute about the fact that the petitioner became the absolute owner of the land to an extent of 751 Sq. yards in T.S.No.4047/1 of Tirupathi town. She derived the said land from her husband. The said land was required for the purpose of formation of 40' wide link road connecting Tilak Road and Gangamma temple road. There cannot be any dispute that formation of road is a public purpose. Admittedly the Government has not taken up any proceedings under the Land Acquisition Act. Unless the Government acquires the land in accordance with the provisions of the Land Acquisition Act, the question of paying compensation does not arise.

Learned counsel for the appellants placed reliance on a decision of Division Bench of this court in ***Executive Engineer, I.B. Division, Nirmal v. C.Shankar*** wherein it is held "*when the land was taken over in 1971, proceedings under Land Acquisition Act were not initiated and as such there was an infraction of fundamental right guaranteed under Article 31 of Indian Constitution".*

There is no doubt about the fact that no person shall be deprived of his property except in accordance with law. Admittedly the possession of the land was taken in the year 1990. It is not as though the Municipality took the possession for formation of the road. It is the husband of the petitioner who voluntarily came forward to hand over possession. No doubt, the authorities concerned ought to have initiated the proceedings under the Land Acquisition Act or under the Municipalities Act so as to determine the market value of the land for payment to the land owner. If any land is required for road widening, the Municipality can acquire the land either by initiating land acquisition proceedings or by way of negotiations. Admittedly in this case no negotiations have been taken place so as to arrive at a particular amount for payment of compensation. Though the husband of the writ petitioner agreed to receive the compensation at the rate fixed by the District Collector, but the R.D.O. fixed the market value of

the land at Rs.5,000/- per Sq. yard basing on the report of the Mandal Revenue Officer. The public authorities are required to act fairly and reasonably. In order to fix the market value, the concerned Revenue Divisional Officer has to take into account the relevant sale transactions in and around the land of the petitioner and such other documents relevant for the purpose of determining and fixing the market value. The R.D.O. cannot fix the market value arbitrarily and whimsically. Admittedly the land acquisition proposals were submitted to the District Collector, Chittoor by the Municipal Commissioner vide proceedings Roc.No.8325/84/G1 dated 27.6.1987. As seen from the correspondence between the Municipal Commissioner and the Government, it is clear that proposals for land acquisition proceedings have been taken up in the year 1990 under the Land Acquisition Act, but advance possession was given by the claimant himself and no proceedings have been initiated admittedly. Unless the value of the land is determined and fixed in accordance with the procedure prescribed by conducting an enquiry by the Land Acquisition Officer, the question of payment of compensation does not arise. There is a serious dispute with regard to the valuation of the land as fixed by the R.D.O. because, according to the Municipality the value of the land at the relevant point of time is only Rs.500/- per Sq. yard. In any view of the matter, the learned single Judge while exercising the extraordinary jurisdiction ought not to have issued a Mandamus directing the respondents to pay the compensation as claimed by the writ petitioner. Therefore, the impugned order is not sustainable. At the same time, we cannot countenance the inaction on the part of the respondents in not taking proper steps to acquire the land in accordance with law. The writ petitioner was deprived of the use of the land for about more than 15 years without paying any compensation. But, the remedy of the writ petitioner is elsewhere. Now the stand of the Municipality is that both eastern and western gates of the 2nd vegetable market are closed and are not in use and therefore the land acquired for formation of road is not put to use; hence, no useful purpose would be served in now acquiring the land of the petitioner. Therefore, the Municipality has taken necessary

action to return the land that was taken possession from the husband of the petitioner. Therefore, a direction to the appellants cannot be issued compelling them to acquire the land in accordance with the Act.

The 1st respondent herein filed a counter affidavit in this writ appeal stating that she is willing to take return of the land provided the authorities ensure that she would not face any impediment or obstruction in her enjoyment of the same from shopkeepers.

Since the land in question is not required by the Municipality, we consider it appropriate to direct the appellants herein to hand over the possession of the land taken from the husband of the writ petitioner in the same condition as it was when the possession was taken over by the appellants herein. The possession shall accordingly be delivered to the 1st respondent – writ petitioner within a period of three months from the date of receipt of a copy of this order.

It is not possible for us to make any estimation of the damages suffered by the 1st respondent - writ petitioner on account of retention of possession by the appellants herein ever since 1990. The remedy is left open to claim damages for use and occupation of the land by the Municipality to which she may be entitled in law. It is needless to observe that in case the respondent No. 1 – writ petitioner avails any such remedy, the same may have to be considered in accordance with law uninfluenced by any of the observations, if any, made in this order.

The order under challenge is not sustainable and it is accordingly set aside.

The writ appeals are accordingly disposed of with the above observations.

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B. Sudershan Reddy, J.

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K.C. Bhanu, J.

Date: --11—2004.

MVB.

To

1. The Prl.Secretary to Government,

Municipal Administration & Urban Development Department,

A.P.Secretariat, Hyderabad.

2. The Commissioner, Tirupati Municipality, Tirupati, Chittoor District.

3. 2 CCs to G.P. for Municipal Administration, High Court Buildings,

Hyderabad (PUT)

4. 2 CCs to G.P. for Assignment, High Court Buildings, Hyderabad (OUT)